

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

RICKKE LEON GREEN,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-06-63-L
)	
JOHN W. WHETSEL, Sheriff,)	
)	
Respondent.)	

ORDER

This matter is before the court for review of the January 20, 2006 Report and Recommendation entered by United States Magistrate Judge Gary M. Purcell wherein he recommends that the petition for habeas relief be dismissed without prejudice upon filing for failure to exhaust available state court remedies. Upon reviewing the record, the Magistrate Judge found that petitioner has not shown that he is unable to litigate his constitutional claims in a direct appeal. As noted by the Magistrate Judge, publicly available records demonstrate that petitioner has been appointed counsel for the purpose of pursuing a direct appeal and that a direct appeal from his conviction is pending.

The court file reflects that petitioner filed a partial objection to the Report and Recommendation and has filed other motions requesting copies of certain documents and complaining about the processing of forms by jail authorities. Petitioner's objection alleges generally that he is unable to litigate his

constitutional claims on direct appeal because his counsel is not communicating with him. The court has reviewed petitioner's objection as it relates to the substance of the Magistrate Judge's recommendation. The publicly available state court records indicate that the deadline for petitioner's appellate brief in the direct appeal was recently extended. Clearly, petitioner's direct appeal is still pending. The Magistrate Judge properly found that petitioner cannot obtain habeas relief in this court because his state court remedies have not been exhausted. Petitioner's arguments are insufficient to overturn the recommendation of the Magistrate Judge. Accordingly, upon *de novo* review, the court finds that the Report and Recommendation should be and is hereby adopted in its entirety. This action is **DISMISSED without prejudice upon filing for failure to exhaust available state court remedies.** In light of this order, petitioner's motions [**Doc. Nos. 7 & 9**] are **denied.**

It is so ordered this 23rd day of February, 2006.



TIM LEONARD
United States District Judge